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Attorneys for Tacoma Screw Products, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA, BILLINGS DIVISION

KENNETH DERHEIM,

Plaintiff,

vs

TACOMA SCREW PRODUCTS, INC.,
a Washington Corporation,

Defendant.

) Cause No.: CV:_____

) **NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendant Tacoma Screw
Products, Inc. (“Tacoma Screw”) removes the above-referenced action to the

United States District Court for the District of Montana, Billings Division. As grounds for removal, Tacoma Screw states:

1. On October 22, 2020, Plaintiff commenced this action, Cause No. DV-20-1385 (the “State Court Action”), in the Thirteenth Judicial District Court, County of Yellowstone, Montana (the “State Court”), alleging Count I, by filing its Complaint and Jury Demand.

2. Tacoma Screw was served with the Complaint on October 26, 2020 as set forth in the Return of Service.

3. A copy of the Complaint and Summons, including the Return of Service, in the State Court Action, along with the Case Register Report bearing the date of November 16, 2020, is attached hereto as Exhibit 1. No other process, pleadings, or orders have been served on Tacoma Screw to date. *See* 28 U.S.C. § 1446(a); Exhibit 1.

4. Removal is proper because this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 (diversity of citizenship). *See* 28 U.S.C. § 1441.

5. There are two requirements for invoking subject-matter jurisdiction on the basis of diversity: (A) the amount in controversy must exceed \$75,000.00 and (B) there must be diversity of citizenship. 28 U.S.C. § 1332(a).

6. As to the amount in controversy requirement, the Complaint in the State Court Action alleges that Tacoma Screw wrongfully discharged the Plaintiff in violation of the Wrongful Discharge from Employment Act (“WDEA”), Mont. Code Ann. § 39-2-901. (Ex. 1, ¶ 16). The WDEA provides for damages for WDEA claims up to an amount equal to “lost wages and fringe benefits for a period not to exceed 4 years from the date of discharge, together with interest on the lost wages and fringe benefits.” Mont. Code Ann. § 39-2-905(1).

7. In this case, the complaint does not specifically set forth a claim for damages in an amount exceeding \$75,000.00 but, Tacoma Screw is entitled to set forth a good faith basis that the amount in controversy exceeds \$75,000.00. *See, Mattheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003); *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996).

8. The required amount in controversy to support removal is clearly met in this case as in Plaintiff’s annual salary for 2019, including bonus, was in excess of \$54,000.00, not including the value of benefits, which alone over a four-year period amounts to \$216,000.00. Accordingly, the amount in controversy in the State Court Action indisputably exceeds \$75,000.00.

9. As to the diversity of citizenship requirement, the parties must be “citizens of different States.” 28 U.S.C. § 1332(a)(1). A business entity is deemed

to be a citizen of its state of incorporation and its principal place of business. 28 U.S.C. § 1332(c)(2).

10. Plaintiff Kenneth Derheim is an individual who resides in Yellowstone County, Montana, and is therefore a citizen of Montana. (Ex. 1, ¶ 1.)

11. Defendant Tacoma Screw is a citizen of Washington, as it is incorporated in the State of Washington and its principal place of business is in Tacoma, Washington. (Ex. 1, ¶ 2.)

12. There is complete diversity of citizenship between Plaintiff, on the one hand, and Defendant, on the other hand.

13. The District of Montana, Billings Division is the district court of the United States for the district and division within which the State Court Action is pending. *See* 28 U.S.C. § 1446(a), D. Mont. L.R. 1.2(c).

14. No Defendant in the State Court Action is a citizen of the state of Montana. *See* 28 U.S.C. § 1441(b)(2).

15. This Notice of Removal is being filed within thirty days of Tacoma Screw receiving a copy of the Complaint, and, as such, is timely. *See* 28 U.S.C. § 1446(b); *See also Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347-48 (1999) (thirty day removal period is triggered by “simultaneous service of the summons and complaint, or receipt of the complaint, ‘through

service or otherwise, after and apart from service of the summons, but not by mere receipt of the complaint unattended by any formal service”).

16. Promptly after filing this Notice of Removal, Tacoma Screw will serve written notice on Plaintiff and will file a copy of this Notice of Removal with the State Court, pursuant to 28 U.S.C. § 1446(d) and D. Mont. L.R. 3.3.

WHEREFORE, Defendant Tacoma Screw Products, Inc. requests that the State Court Action be removed from the Thirteenth Judicial District Court, County of Yellowstone, Montana, to the United States District Court for the District of Montana, Billings Division.

Dated this 16th day of November, 2020.

CROWLEY FLECK PLLP

By: /s/ Bruce F. Fain

Bruce F. Fain

Brad Brown

Attorneys for Tacoma Screw Products, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of November, 2020, a true and correct copy of the foregoing document was served on the following persons by the following means:

<u> X </u>	CM/ECF
<u> </u>	Hand Delivery
<u> </u>	Mail
<u> </u>	Overnight Delivery Service
<u> </u>	Fax
<u> X </u>	E-Mail

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